

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MARGUERITE MARION,)	
)	
Plaintiff,)	
)	Case No. 08 CV 3867
v.)	
)	Judge Virginia M. Kendall
BANK OF AMERICA, NATIONAL ASSOCIATION,)	
)	Magistrate Judge Geraldine Soat Brown
)	
Defendant.)	

BOA’S MOTION TO DISMISS THE COMPLAINT

Defendant BANK OF AMERICA CORPORATION¹ (“BOA”), by its attorneys, respectfully moves to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. In support of its motion, BOA states as follows:

1. On June 10, 2008, Plaintiff Marguerite Marion (“Marion”) served BOA with the complaint in this case, which she had previously filed on May 20, 2008, in Illinois state court. On July 8, 2008, BOA removed this case to this Court based on federal question and diversity jurisdiction.

2. Marion's Complaint, Counts I-III seeks to recover unpaid incentive/severance bonus benefits. Count I alleges a violation of the Illinois Wage Payment and Collection Act (“IWPCA”); Count II alleges a violation of the Illinois Sales Representatives Act (“SRA”); and Count III alleges a violation of the Illinois “Earned Bonuses” Administrative Code.

¹ The Complaint incorrectly names “Bank of America, National Association” as the Defendant.

3. Count IV seeks to recover medical insurance benefit coverage. It alleges a violation of the federal Consolidated Omnibus Budget Reconciliation Act ("COBRA"), as well as three parts of the Illinois Insurance Code: the Illinois Continuation Law, Dependent Child Continuation Law, and Spousal Continuation Law ("Illinois Insurance Code claims").

4. BOA moves to dismiss Marion's complaint because:

a. Count's I-III are claims for incentive/severance bonus benefits that are only available under an ERISA severance plan. As such, those claims are preempted by ERISA and must be dismissed because Marion has not pursued or exhausted the severance plan's ERISA-mandated administrative claim procedures. Count III must be dismissed for the additional reason that there is no separate cause of action under the Illinois "Earned Bonuses" Administrative Code.

b. Count IV's federal COBRA claim is a claim for medical insurance benefit coverage that is only available under an ERISA medical insurance benefit plan (or its successor). As such, that claim must be dismissed because Marion has not pursued or exhausted either medical insurance benefit plan's ERISA-mandated administrative claim procedures.

c. Count IV's Illinois Insurance Code claims are likewise claims for medical insurance benefit coverage that is only available under an ERISA medical insurance plan (or its successor). As such, those state law claims are preempted by ERISA and must be dismissed because Marion has not pursued or exhausted either medical insurance plan's ERISA-mandated administrative claim procedures. In addition, those claims must be dismissed because there is no private cause of action under the Illinois Insurance Code.

WHEREFORE, for the foregoing reasons and those set forth in its supporting memorandum of law, BOA respectfully requests that the Court dismiss the Complaint with prejudice.

Respectfully submitted,

BANK OF AMERICA CORPORATION

/s/Kathryn S. Clark
One of Its Attorneys

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July 14, 2008

CERTIFICATE OF SERVICE

Kathryn S. Clark, an attorney, hereby certifies that on July 14, 2008, she electronically filed the foregoing **BOA'S Motion To Dismiss The Complaint** in the United States District Court for the Northern District of Illinois and that a true and correct copy of the same was served upon the following via first class U.S. mail, postage pre-paid:

Laurel G. Bellows
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/s/Kathryn S. Clark
Kathryn S. Clark